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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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MAC TAYLOR,

Petitioner,

v.

THE SUPERIOR COURT OF SACRAMENTO  
COUNTY,

Respondent;

DEBRA BOWEN, as Secretary of State,  
etc., et al.,

Real Parties in Interest.

C064428

(Super. Ct. No.  
34-2010-80000460)

Petitioner Mac Taylor, the Legislative Analyst for the State of California, seeks a peremptory writ of mandate directing respondent superior court to vacate its judgment entered March 12, 2010, insofar as it compels revision of the ballot label, ballot title and summary, and "Fiscal Effect" analysis for Proposition 14 prepared by petitioner. Respondent court found petitioner's conclusion that Proposition 14, if enacted, would result in "[n]o significant net change in state and local government costs to administer elections" to be false

and misleading. Accordingly, respondent court directed, inter alia, the foregoing be replaced with language formulated by the court itself, to wit, that "[t]he data are insufficient to identify the amount of any increase or decrease in costs to administer elections."

To preserve our jurisdiction, on March 15, 2010, we issued an order staying submission of the ballot materials to the State Printer pending further order of this court. We also informed the parties that we were considering issuing a peremptory writ in the first instance and that any opposition or further opposition was to be filed on or before 12:00 p.m. on March 16, 2010. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171 (*Palma*).) On March 15, 2010, real party in interest Allan D. Clark filed a preliminary letter brief in opposition to the petition. That same day, real parties in interest the Governor and Abel Maldonado and "Yes on 14—Californians for an Open Primary" filed letter briefs in support of the petition, and real parties in interest the Secretary of State and the State Printer filed an answer to the petition. On March 16, 2010, real party in interest Allan D. Clark filed opposition to the petition.

Having reviewed the petition as well as the opposition thereto, we conclude there is no factual or legal basis for respondent court's decision to substitute its own fiscal impact language for Proposition 14 in lieu of that originally formulated by petitioner. Accordingly, we shall order a peremptory writ of mandate to issue.

Although the judgment from which the instant petition has been taken is appealable (*Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, 438), given the immediate time constraints for the printing of the ballot for the upcoming primary election, petitioner's remedy by appeal is inadequate. (*Ibid.*) In order to preserve this court's jurisdiction pending finality of this decision, we issue a mandatory stay that effectively grants petitioner the relief to which we conclude he is entitled. (See *id.* at pp. 437, 443; see also *People ex. rel. S. F. Bay etc. Com v. Town of Emeryville* (1968) 69 Cal.2d 533.)

#### **DISCUSSION**

A detailed history of Proposition 14, a statewide initiative scheduled to be included on the June 8, 2010, ballot, is contained in our nonpublished opinion in *Clark v. Superior Court*, C064430, filed March 16, 2010, and need not be recounted here. Suffice it to say Proposition 14 would allow in a contest for a state elective office or a congressional office the two candidates receiving the highest vote totals at the primary election, regardless of party affiliation, to compete for the office at the ensuing general election.

As to each state measure submitted to the voters, the ballot pamphlet must include "an impartial analysis of the measure describing the measure and including a fiscal analysis of the measure showing the amount of any increase or decrease in revenue or cost to state or local government." (Elec. Code, § 9087, subd. (a); Gov. Code, § 88003; see also Elec. Code, § 9086, subd. (b); Gov. Code, 88002, subd. (b).) Additionally,

the prepared ballot title and summary of the measure must be amended before inclusion into the ballot pamphlet "to contain a summary of the Legislative Analyst's estimate of the net state and local government fiscal impact." (Elec. Code, § 9087, subd. (e); Gov. Code, § 88003.)

Pursuant to this statutory mandate, petitioner prepared a "Fiscal Effect" analysis for Proposition 14 wherein he concluded "the measure's fiscal effects would not be significant for state and local governments." Consistent with this analysis, petitioner prepared for inclusion in both the ballot label and ballot title and summary a fiscal impact summary in which he reiterated that Proposition 14, if adopted by the voters, would result in "[n]o significant net change in state and local government costs to administer elections." (Emphasis omitted.)

On March 9, 2010, real party in interest Allan D. Clark filed an amended petition for writ of mandate in respondent court wherein he challenged, inter alia, the fiscal analysis discussion and conclusions submitted by petitioner. Clark's action relied heavily on the declaration of Steve Weir, the Clerk/Recorder/Registrar of Voters for Contra Costa County, who opined about the increased printing and ballot processing costs that would be incurred by Contra Costa County should Proposition 14 be adopted by the voters. Extrapolating therefrom, Weir estimated the passage of Proposition 14 would lead to costs statewide in the range of \$10-20 million per election cycle. In light of Weir's declaration, Clark argued petitioner's "Fiscal Effect" analysis was false and misleading and that the ballot

label and ballot title and summary should be rewritten to state as follows: “[Adoption of this measure] [c]ould result in between \$10 million and \$20 million in increased local government costs per election cycle to administer elections and could result in additional one-time costs to local governments.” (Italics omitted.)

Following hearing and argument, respondent court adopted a position akin to “splitting the baby in half.” Respondent court rejected the “Fiscal Effect” analysis set forth by petitioner, as well as the figures suggested by Clark. Instead, respondent court directed the language used by petitioner in the ballot label and ballot title and summary that there would be “[n]o significant net change in state and local government costs to administer elections” *be replaced* with language of the court’s own making, to wit, “[t]he data are insufficient to identify the amount of any increase or decrease in costs to administer elections.” Respondent court also directed a similar change be made to petitioner’s “Fiscal Effect” analysis.

Unquestionably, the ballot label, ballot title and summary, and “Fiscal Effect” analysis prepared by petitioner must reasonably inform the voters of the proposed measure’s fiscal impacts. (Elec. Code, § 9087, subds. (a), (e); see *Horneff v. City & County of San Francisco* (2003) 110 Cal.App.4th 814, 820.) To this end, these materials must be true and impartial and not argumentative. (*Ibid.*) “The main purpose of these requirements is to avoid misleading the public with inaccurate information.” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of*

*Equalization* (1978) 22 Cal.3d 208, 243.) Yet, "[only] in a clear case should a title . . . [or summary] be held insufficient.'" (*Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 92-93.)

More importantly, while Elections Code section 9092 provides for a preelection challenge to the sufficiency of petitioner's fiscal analysis, in ruling on such challenge respondent court is not vested with a wide range of discretion. (*Horneff, supra*, 110 Cal.App.4th at p. 821.) Instead, relief may be granted "only upon clear and convincing proof that the [challenged ballot materials] in question [are] false, misleading, or inconsistent with the requirements of this code[.]" (Elec. Code, § 9092.)

Given this heightened standard, respondent court's decision to substitute its own language for that originally set forth by petitioner cannot stand. In opposing the action below, petitioner, despite the time constraints placed upon his office by a late-filed amended petition, provided evidence detailing the efforts by his office to gauge the fiscal impact of Proposition 14. These efforts date back to July 2009 and included, inter alia, attempts to elicit feedback from county registrars throughout the state of the measure's fiscal impacts. Petitioner's analysis also took into account a previous initiative which made comparable changes to the state's election process. Finally, petitioner described various ways in which counties could save money by formatting and designing ballots, which would offset costs incurred by a change in the conduct of

elections. As a result, petitioner concluded Weir's estimate that adoption of Proposition 14 would result in a \$10-20 million increase in local election costs was "considerably" overstated.

In light of the foregoing, we agree with petitioner that the record at best shows there was a difference of opinion as to the issue of the fiscal impact of Proposition 14. A "difference of opinion" hardly rises to the level of clear and convincing proof that petitioner's "Fiscal Effect" analysis and fiscal impact statement for the ballot label and ballot title and summary are false and misleading. Given the substantial deference we must accord to petitioner's ballot materials (cf. *Tinsley v. Superior Court* (1983) 150 Cal.App.3d 90, 108), we conclude on the record before us that respondent court overstepped its bounds when it interjected its preferred language into the fiscal analysis discussion for Proposition 14.

#### **CONCLUSION**

Petitioner has prayed for issuance of a peremptory writ in the first instance, and real party has filed opposition thereto. The procedural requirements delineated in *Palma, supra*, 36 Cal.3d 171 having been satisfied, we are authorized to issue the requested relief.

Let a peremptory writ of mandate issue directing respondent court to vacate its judgment entered March 12, 2010, insofar as the judgment compels a revision of petitioner's "Fiscal Effect" analysis, ballot label, and ballot title and summary for Proposition 14 with the language developed by respondent court. Petitioner's original "Fiscal Effect" analysis, ballot label,

and ballot title and summary are attached as Appendix A to this opinion.<sup>1</sup> This decision is final forthwith as to this court. (See Cal. Rules of Court, rule 8.490(b)(3).)

Further, the temporary stay order issued by this court on March 15, 2010, is vacated and the following stay order shall remain in effect until this decision is final for purposes of review: The Secretary of State shall not cause to be submitted to the State Printer (nor shall the State Printer use) any language for the "Fiscal Effect" analysis, ballot label, and ballot title and summary for Proposition 14 except for the language included in Appendix A to this opinion.

Petitioners are awarded costs in this original proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(A).)

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RAYE, J.

We concur:

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SCOTLAND, P. J.

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HULL, J.

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<sup>1</sup> Appendix A incorporates the changes ordered in this opinion as well as those required by our nonpublished opinion in a related case, *Clark v. Superior Court*, C064430, filed March 16, 2010.



## **APPENDIX A**

### **BALLOT LABEL**

#### **ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS.**

Changes the primary election process for congressional, statewide, and legislative races. Allows all voters to choose any candidate regardless of the candidate's or voter's political party preference. Ensures that the two candidates receiving the greatest number of votes will appear on the general election ballot regardless of party preference. Fiscal Impact: No significant net change in state and local government costs to administer elections.

### **BALLOT TITLE AND SUMMARY**

#### **ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS.**

- Encourages increased participation in elections for congressional, legislative, and statewide offices by changing the procedure by which candidates are selected in primary elections.
- Gives voters increased options in the primary by allowing all voters to choose any candidate regardless of the candidate's or voter's political party preference.
- Provides that candidates may choose not to have a political party preference indicated on the primary ballot.

- Provides that only the two candidates receiving the greatest number of votes in the primary will appear on the general election ballot regardless of party preference.
- Does not change primary elections for President, party committee offices and nonpartisan offices.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- No significant net change in state and local government costs to administer elections.

### **Fiscal Effect**

***Minor Costs and Savings.*** This measure would change how elections officials prepare, print, and mail ballot materials. In some cases, these changes could increase these state and county costs. For instance, under this measure, all candidates—regardless of their party preference—would be listed on each primary election ballot. This would make these ballots longer. In other cases, the measure would reduce election costs. For example, by eliminating in some instances the need to prepare different primary ballots for each political party, counties sometimes would realize savings. For general election ballots, the measure would reduce the number of candidates (by only having the two candidates who received the most votes from the primary election on the ballot). This would make these ballots shorter. The direct costs and savings resulting from this measure would be relatively minor and would tend to offset each

other. Accordingly, we estimate that the measure's fiscal effects would not be significant for state and local governments.

***Indirect Fiscal Effects Impossible to Estimate.*** In some cases, this measure would result in different individuals being elected to offices than under current law. Different officeholders would make different decisions about state and local government spending and revenues. These indirect fiscal effects of the measure are unknown and impossible to estimate.